

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MARSHALL COUNTY RURAL ELECTRIC COOPERATIVE d/b/a CONSUMERS ENERGY	DOCKET NO. P-841
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO TAKE
OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued August 9, 2000)

On July 21, 2000, Marshall County Rural Electric Cooperative d/b/a Consumers Energy (Marshall County REC) filed a petition for a permit to construct, operate, and maintain approximately 230 feet of 2-inch diameter steel pipeline and approximately 10.2 miles of 6-inch polyethylene pipeline for the transportation of natural gas in Marshall County, Iowa pursuant to Iowa Code §§ 479.5 and 479.6 (1999) and 199 Iowa Administrative Code (IAC) 10.2 and 10.9. Marshall County REC amended its petition on July 26, 2000 and July 31, 2000. The proposed pipeline will provide natural gas service to the Harvester development in Marshall County. On August 4, 2000, the Utilities Board (Board) assigned this proceeding to a presiding officer and directed that a procedural schedule be established and a date set for hearing.

Marshall County REC filed a land restoration plan with its petition. The Board will separately consider whether the plan meets the requirements of the statute and Board rules in Docket No. LRP-00-2.

The Board's authority and jurisdiction. The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (1999).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12 (1999). The petitioner must also satisfy the financial requirements of Iowa Code § 479.26 (1999).

The issues. Pursuant to Iowa Code §§ 479.7 and 479.8 (1999) and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, and issues raised by objectors or any other party. The conduct of this case will be governed by Iowa Code Chapters 17A and 479.

Prepared testimony and exhibits. All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4) (1999). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code §17A.12(8) (1999). Unless contrary arrangements are made on

the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11 (1999). This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

Marshall County REC must submit prepared testimony and exhibits prior to the hearing. At minimum, Marshall County REC's prepared testimony must address the issues listed above, and the issues identified in the attached report from Mr. Gary Burnett. The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the

information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Utilities Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

Party status. Presently, Marshall County REC and the Consumer Advocate are the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2 (1999). Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 (1999) and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter. In order to qualify as a party, the objector must be able to demonstrate some right or interest, which may be affected by the granting of the permit. See Iowa Code §§ 17A.2(2), 17A.2(5), and 479.9 (1999). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits have already been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the offices of the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed not less than five days prior to the date of hearing. Late filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed in triplicate with the Executive Secretary of the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary. A party (including objectors) must file an original and ten copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case. 199 IAC 1.8; See also 199 IAC 7.5(3), 7.7(11), 7.7(12), 7.7(15) and 7.8(2)(a). Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), that verifies a copy of the document was served upon the other parties. These procedures are necessary to comply with Iowa Code Chapter 17A, that provides in part:

Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case *shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested case, except upon notice and opportunity for all parties to participate* as shall be provided for by agency rules.

Iowa Code §§ 17A.17(2) (1999) (as amended)(emphasis added). Objectors and parties should examine 199 IAC Ch. 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case.

Proposal to take official notice. A Utilities Division staff member has prepared a report concerning Marshall County REC's petition. Iowa Code § 479.11 (1999). A copy of the report, dated August 8, 2000, is attached to this order. Pursuant to Iowa Code § 17A.14(4) (1999), the administrative law judge proposes to take official notice of the report and the facts contained therein thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c) (1999). Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and at least five days prior to the hearing. The parties will have the opportunity to contest any information contained in the report in prefiled testimony and at the hearing.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to the petition of Marshall County REC in this docket will be presumed to be a party in the proceeding unless it

is established at hearing that the objector has no right or interest that may be affected by the pipeline.

2. Objections must be made in writing and filed in triplicate with the Executive Secretary of the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, not less than five days before the hearing. Objectors must file an original and ten copies of all subsequent communications to the Board with the Executive Secretary at the same address, which must be accompanied by a certificate of service.

3. The following procedural schedule is established:

a. On or before August 23, 2000, Marshall County REC must file prepared direct testimony relating to its petition for a permit to construct, operate and maintain a natural gas pipeline.

b. On or before September 6, 2000, the Consumer Advocate and any objector may file prepared responsive testimony.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held at 10:00 a.m. on Tuesday, September 12, 2000, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

4. The administrative law judge proposes to take official notice of the report attached to this order and marked as Appendix A and of the facts contained therein. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Any party desiring to cross-examine the author of the report concerning the statements contained therein must file a notice of intent to cross-examine no later than September 7, 2000.

5. Pursuant to Iowa Code §§ 17A.12(1), 479.9 and 479.10 (1999) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon Marshall County REC and the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

UTILITIES BOARD

/s/ Amy L. Christensen

Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper

Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 9th day of August, 2000.